

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	<u>13-CR-3782(2)-JLS</u>
PLAINTIFF,	)	<u>15-CR-0033(1)-JLS</u>
	)	
VS.	)	SAN DIEGO, CA
	)	APRIL 29, 2016
MICHAEL VANNAK KHEM MISIEWICZ,	)	10:30 A.M.
DEFENDANT.	)	

TRANSCRIPT OF STATUS HEARING/SENTENCING PROCEEDINGS

BEFORE THE HONORABLE JANIS L. SAMMARTINO

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: OFFICE OF THE U. S. ATTORNEY  
BY: MARK W. PLETCHER, ESQ.  
PATRICK HOVAKIMIAN, ESQ.  
880 FRONT STREET, RM. 6293  
SAN DIEGO, CA 92101

FOR THE DEFENDANT: LAW OFFICES OF MARK F. ADAMS  
BY: MARK F. ADAMS, ESQ.  
964 FIFTH AVE., SUITE 335  
SAN DIEGO, CA 92101  
AND  
LAW OFFICES OF WENDY S. GERBOTH  
BY: WENDY S. GERBOTH, ESQ.  
964 FIFTH AVE, SUITE 214  
SAN DIEGO, CA 92101

PROBATION OFFICER: FRANCISCO J. TORRES

(APPEARANCES CONTINUED ON NEXT PAGE)

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PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT  
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I N D E X

PROCEEDINGS :

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1 THE DEPUTY CLERK: NUMBER 12 AND NUMBER 13 ON THE  
2 CALENDAR, 13-CR-3782 AND 15-CR-33, UNITED STATES VS. MICHAEL  
3 VANNAK KHEM MISIEWICZ, FOR A SENTENCING.

4 MR. ADAMS: GOOD MORNING, YOUR HONOR.

5 MARK ADAMS AND WENDY GERBOTH ON BEHALF OF MICHAEL  
6 MISIEWICZ. HE IS PRESENT BEFORE THE COURT ON BOND.

7 MR. PLETCHER: GOOD MORNING, YOUR HONOR.

8 MARK PLETCHER AND PATRICK HOVAKIMIAN FOR THE UNITED  
9 STATES.

10 THE COURT: OKAY. THANK YOU.

11 THE COURT HAS READ AND CONSIDERED THE FOLLOWING  
12 DOCUMENTS FOR SENTENCING THIS MORNING: THE PRESENTENCE  
13 REPORT; THE ADDENDUM TO THE PRESENTENCE REPORT; DEFENDANT'S  
14 OBJECTIONS TO THE PRESENTENCE REPORT AND ALL OF THE ATTACHED  
15 EXHIBITS TO THAT DOCUMENT; DEFENDANT'S SENTENCING MEMORANDUM  
16 AND ATTACHMENTS, WHICH INCLUDE, WHICH ARE EXTENSIVE, WHICH  
17 ALSO INCLUDE THE DEFENDANT'S LETTER; DEFENDANT'S SUPPLEMENTAL  
18 SENTENCING MEMORANDUM; SENTENCING EXHIBITS ENTITLED FIRST  
19 TRANCHE, WHICH WAS EXTENSIVE. IT INCLUDED AWARDS THAT THE  
20 DEFENDANT HAS RECEIVED, FITNESS REPORTS, LETTERS, EXTENSIVE  
21 NUMBER OF LETTERS FROM FAMILY, BIOLOGIC, ADOPTED, FRIENDS.  
22 THE SECOND TRANCHE OF SENTENCING EXHIBITS, AGAIN, EXTENSIVE  
23 LETTERS FROM A VARIETY OF PEOPLE. THE GOVERNMENT'S SENTENCING  
24 MEMORANDUM WITH ATTACHED EXHIBITS, LETTERS AND PHOTO;  
25 GOVERNMENT'S SENTENCING MEMORANDUM, AND THE UNDERLYING PLEA

1       AGREEMENT.

2               I THINK I RECEIVED MORE DOCUMENTS IN THIS CASE THAN I  
3       HAVE IN MANY OTHERS IN MY YEARS ON THE COURT TO DATE. I WOULD  
4       LIKE EVERYBODY TO KNOW EACH AND EVERY ONE OF THEM HAS BEEN  
5       READ. SOME OF THEM HAVE BEEN READ MORE THAN ONCE. SO FOR  
6       THOSE OF YOU WHO ARE HERE TODAY WHO WROTE A LETTER, IT HAS  
7       BEEN READ AND CONSIDERED CAREFULLY.

8               SO WITH THAT, PLEASE GO AHEAD, SIR.

9               MR. ADAMS: THANK YOU VERY MUCH, YOUR HONOR.

10              I DO WANT TO POINT OUT THAT THERE HAS BEEN A  
11       REMARKABLE NUMBER OF LETTERS WRITTEN, AND I APPRECIATE THAT  
12       THE COURT HAS READ THEM ALL AND CAREFULLY CONSIDERED THEM ALL.  
13       THE NUMBER OF LETTERS AND THE COMMENTS MADE IN THOSE LETTERS  
14       SPEAK TO THE EXTRAORDINARY SUPPORT THAT THIS REMARKABLE MAN  
15       HAS IN THE COMMUNITY, AND THE FACT THAT SO MANY PEOPLE HAVE  
16       TAKEN THE TIME TO COME HERE FROM SUCH GREAT DISTANCES AND BE  
17       HERE IN COURT THIS MORNING ALSO SPEAKS TO HIS VALUE IN THEIR  
18       LIVES.

19              TODAY, WE HAVE FAMILY AND COLLEAGUES AND FRIENDS FROM  
20       AS FAR AWAY AS MASSACHUSETTS, WISCONSIN, FLORIDA, TEXAS,  
21       DELAWARE, ILLINOIS. I WOULD LOVE TO INTRODUCE THEM ALL, BUT  
22       THAT PROCESS ALONE WOULD TAKE SO MUCH TIME. BUT THESE ARE HIS  
23       CLOSEST FAMILY AND FRIENDS AND COLLEAGUES, AND THEY ARE  
24       SHOWING THEIR SUPPORT NOT ONLY BY WRITING LETTERS, BUT ALSO BY  
25       COMING HERE TODAY.

1           ALL OF THESE PEOPLE KNOW WHAT MICHAEL MISIEWICZ DID.  
2           THEY UNDERSTAND THE GRAVITY OF THE HARM HE CAUSED.   THEY HAVE  
3           TALKED WITH HIM ABOUT HIS DECISIONS THAT LEADS HIM HERE TODAY.  
4           THEY REMAIN SUPPORTIVE.   THEY'RE HERE TO SHOW THAT SUPPORT.  
5           SOME HAVE FORGIVEN HIM; OTHERS ARE WORKING ON THE PROCESS OF  
6           FORGIVING HIM FOR THE DECISIONS AND THE MISTAKES THAT HE MADE.

7           THERE'S SIMPLY NO EXCUSE FOR TAKING THINGS OF VALUE  
8           FROM LEONARD FRANCIS.   THE DAY MICHAEL MISIEWICZ FIRST TOOK  
9           ANYTHING OF VALUE, HE RENDERED HIMSELF COMPROMISED AND,  
10          FRANKLY, UNABLE TO OBJECTIVELY DISCHARGE HIS GREAT  
11          RESPONSIBILITIES, AND HE BROKE THE LAW.   ANY GDMA PORT  
12          DECISIONS HE WAS INVOLVED WITH GOING FORWARD WERE TAINTED,  
13          WHETHER OR NOT THE NAVY'S MISSION WAS BENEFITED.   THE DAY HE  
14          PROVIDED SCHEDULES OF SHIP PORT VISITS TO LEONARD FRANCIS, HE  
15          BROKE THE LAW.   HE EXERCISED AUTHORITY THAT HE DID NOT HAVE,  
16          AND FOR THESE CRIMES HE MUST BE PUNISHED.

17          WE ARE CONVINCED, AND WE'VE TRIED TO CONVINCE YOUR  
18          HONOR WITH OUR FILINGS, THAT 41 MONTHS IN PRISON IS THE RIGHT,  
19          JUST, AND FAIR SENTENCE ON ALL SIDES.   WITH THAT SENTENCE, HE  
20          WILL SERVE AN ACTUAL THREE YEARS IN PRISON, WHICH IS A LONG,  
21          LONG TIME, AND WHEN HE COMES OUT THE OTHER SIDE, HE WILL  
22          LIKELY HAVE NOTHING.

23          HIS FALL FROM THE HIGHEST REACHES OF THE NAVY HAS  
24          BEEN MUCH LIKE HIS CAREER, EXTRAORDINARY.   MICHAEL MISIEWICZ  
25          AND HIS FAMILY WILL NEVER BE THE SAME.   NO MATTER THE SENTENCE

1 AND THE RESTITUTION THAT IS ORDERED, HIS DEBT TO THE NAVY AND  
2 HIS DEBT TO THE UNITED STATES WILL NEVER BE FULLY PAID. WHAT  
3 HE DID AND THE FATE HE SUFFERS WILL BE FOREVER IN THE PUBLIC  
4 EYE AND CERTAINLY IN THE NAVY LEXICON. 41 MONTHS IN PRISON IS  
5 ENOUGH TO PUNISH, TO DETER, TO SEND A POWERFUL MESSAGE TO ALL  
6 THOSE JUNIOR OFFICERS COMING UP IN THE NAVY.

7 THE PROBATION OFFICE CAME TO THE SAME GUIDELINE RANGE  
8 CALCULATIONS A SLIGHTLY DIFFERENT WAY THAN THE PARTIES DID,  
9 BUT THEY LOOKED AT THE CASE, THEY LOOKED AT THE RELATED CASES,  
10 THEY LOOKED AT MICHAEL MISIEWICZ'S HISTORY, HIS  
11 CHARACTERISTICS, AND THEY DETERMINED THAT A 3553(A) VARIANCE  
12 WAS APPROPRIATE.

13 WE'RE ASKING YOUR HONOR TO VARY A LITTLE MORE THAN  
14 PROBATION SUGGESTS SO AS TO AVOID UNWARRANTED DISPARITY IN THE  
15 SENTENCES OF OTHERS INVOLVED IN THE CONTRACTING AND OVERSIGHT  
16 END OF THIS CASE, LIKE LIEUTENANT COMMANDER MALAKI WHO  
17 PROVIDED LEONARD FRANCIS WITH COMPETITOR CONTRACTING  
18 INFORMATION WHICH ALLOWED GDMA TO TAKE ADVANTAGE OF THE  
19 SYSTEM, WIN THE AWARD OF VIRTUALLY ALL NAVY BUSINESS IN THE  
20 7TH FLEET AREA OF RESPONSIBILITY AS RECENTLY AS 2011, THAT  
21 ALLOWED HIM TO CREATE FICTITIOUS SUBCONTRACTORS AND REPEATEDLY  
22 SUBMIT PHONY INVOICES TO THE GOVERNMENT. AND IN ADDITION,  
23 MALAKI TOOK THINGS OF VALUE. HE PROVIDED SHIP SCHEDULES OVER  
24 THE COURSE OF ALMOST SIX YEARS. HE PERPETUATED AND AIDED A  
25 MASSIVE GDMA FRAUD AND AT ONE POINT EVEN THREATENED A WITNESS

1 AT LEONARD FRANCIS' REQUEST AND HE RECEIVED 40 MONTHS.

2 THE GOVERNMENT WANTS TO PILE ALL OF THE GDMA FRAUD  
3 AND THE COST OF FIXING THE NAVY HUSBANDING SERVICE CONTRACTING  
4 SYSTEM AND OVERSIGHT ON THE SHOULDERS OF MICHAEL MISIEWICZ.  
5 THIS IS NOT FAIR, AND THE EVIDENCE DOES NOT SUPPORT HOLDING  
6 HIM TO ACCOUNT FOR THESE OTHER CRIMES AND COSTS. MICHAEL  
7 MISIEWICZ HAD NOTHING TO DO WITH THE PERPETUATION OF THE  
8 FRAUD. INDEED, HE DID NOT EVEN KNOW OF THE FRAUD, AND MY VIEW  
9 IS THAT EVERYTHING IN HIS HISTORY AND BACKGROUND SUGGESTS  
10 THAT, HAD HE KNOWN OF THE FRAUD, HE WOULD HAVE SPOKEN UP,  
11 DESPITE HIS PARTICIPATION IN THIS BRIBERY CONSPIRACY WITH  
12 LEONARD FRANCIS.

13 THE NAVY'S HUSBANDING CONTRACTING PROBLEMS, WHICH  
14 EXISTED FOR DECADES, LITERALLY, IN EVERY THEATER OF  
15 ENGAGEMENT, HAVE NOW, WITH CONGRESSIONAL OVERSIGHT AND  
16 INVOLVEMENT OF TOP NAVY OFFICIALS, BEEN ADDRESSED, AND WE  
17 SUBMITTED EXHIBITS TO YOUR HONOR ALONG THOSE LINES.

18 IT IS UNFAIR TO HOLD MICHAEL MISIEWICZ ACCOUNTABLE  
19 FOR A BROKEN CONTRACTING SYSTEM THAT AWARDED ALL OF THOSE  
20 HUSBANDING PORT CONTRACTS IN THE 7TH FLEET AREA OF  
21 RESPONSIBILITY TO GDMA WITH LAX OVERSIGHT, WHICH ALLOWED THOSE  
22 FRAUDULENT CONTRACTS AND INVOICES TO BE REPEATEDLY SUBMITTED  
23 FOR PAYMENT.

24 THE GOVERNMENT'S ATTEMPT TO ALSO MAKE THE CASE THAT  
25 MICHAEL MISIEWICZ CONCOCTED FACIALLY PLAUSIBLE JUSTIFICATIONS



1 OR NOW ATTEMPTS TO RATIONALIZE GDMA-INVOLVED DECISIONS AFTER  
2 THE FACT IGNORES THE OBJECTIVE FACT THAT MICHAEL MISIEWICZ'S  
3 STRATEGIC DECISIONS, INCLUDING THOSE AFFECTING GDMA, WERE  
4 FAVORABLE TO THE NAVY AND OBJECTIVELY RECOGNIZED AS SUCH IN  
5 REAL TIME BY HIS SUPERIORS IN AWARDING THE LEGION OF MERIT.

6 THERE IS A CONSISTENT PATTERN THROUGHOUT MICHAEL  
7 MISIEWICZ'S CAREER TO MAKE STRATEGIC DECISIONS BASED ON  
8 MISSION OBJECTIVES AND THEATER CONCERNS, TO PUT THE NAVY AND  
9 THE NATION'S INTERESTS FIRST, ABOVE ALL OTHERS. OF COURSE,  
10 ALL OF THAT IS FOREVER TAINTED AND THE LEGACY THAT HE CREATED  
11 AND BUILT IS FOREVER LOST BY HIS DECISION TO ACCEPT BRIBES  
12 FROM LEONARD FRANCIS AND TAKE ACTIONS WHICH BENEFITED GDMA.

13 MICHAEL MISIEWICZ HAS BEEN DESCRIBED IN SOME OF THE  
14 LETTERS AS TOO SMART FOR HIS OWN GOOD, UNABLE TO EXERCISE  
15 COMMON SENSE AND FOLLOW HIS MORAL COMPASS. HE LOST HIS WIFE.  
16 HE ALLOWED HIMSELF TO BE BRIBED, AND HE HIMSELF ASKED FOR  
17 THINGS OF VALUE FROM LEONARD FRANCIS, AND HE ALONE IS  
18 RESPONSIBLE. HIS LIFE IS RUINED. HE WILL NEVER BE THE SAME.

19 HAVING STUDIED THIS MAN AND HIS HISTORY FOR OVER A  
20 YEAR NOW, IT'S PAINFULLY OBVIOUS TO ME THAT WHAT WE SEE HERE  
21 IS A HEARTBREAKING TRAGEDY FOR WHICH MICHAEL MISIEWICZ IS  
22 PROFOUNDLY SORRY AND ASHAMED. 41 MONTHS IN A PRISON CELL FOR  
23 THIS MAN, WITH HIS BACKGROUND AND HIS HISTORY AND HIS HEALTH  
24 ISSUES, IS SUFFICIENT. ANYTHING MORE, IN OUR VIEW, IS GREATER  
25 THAN NECESSARY.

1                   THANK YOU, YOUR HONOR.

2                   THE COURT:   OKAY.   THANK YOU, MR. ADAMS.

3                   MR. MISIEWICZ, IS THERE ANYTHING YOU WOULD LIKE TO  
4 SAY, SIR, THIS MORNING BEFORE SENTENCING?   YOU HAVE THAT  
5 OPPORTUNITY IF YOU'D LIKE.

6                   MR. MISIEWICZ:   THANK YOU, YOUR HONOR, FOR THE  
7 OPPORTUNITY TO SPEAK.   I'VE EXPRESSED WHAT I WANT TO SAY IN  
8 THE LETTER TO THE COURT AND THROUGH THE EXHIBITS, EXTENSIVE  
9 EXHIBITS, AND THE MEMOS FILED BY MY LAWYERS.

10                  WITH THAT SAID, YOUR HONOR, I WANT TO SAY I'M SORRY  
11 TO YOU.   I'M SORRY TO ALL THAT HAVE BEEN INVOLVED IN THIS CASE  
12 FOR THE EXPENDITURE OF TIME AND RESOURCES BECAUSE OF MY  
13 CRIMINAL ACTIVITY.   I TAKE FULL RESPONSIBILITY FOR THE  
14 RECKLESS BEHAVIOR THAT I EXECUTED, AND I STAND READY TO SERVE  
15 ANY SENTENCING THE COURT DIRECTS.

16                  IF I MAY, YOUR HONOR, I'D LIKE TO ADDRESS MY  
17 FAMILY --

18                  THE COURT:   CERTAINLY.

19                  MR. MISIEWICZ:   -- AND FRIENDS.

20                  MOM, I'M SORRY.   I'M SORRY FOR LETTING YOU DOWN.   I  
21 NEVER INTENDED TO DO THIS AND I NEVER MEANT THE HARM.

22                  I WANT TO THANK ALL MY FAMILY AND FRIENDS AND  
23 SHIPMATES FOR BEING HERE TODAY.   I LOVE OUR COUNTRY, I LOVE MY  
24 NAVY, AND I NEVER MEANT ANY OF THIS.   I'M SORRY.

25                  YOUR HONOR, THANK YOU FOR THE EXTRA TIME, AND THAT'S

1 ALL I HAVE.

2 THE COURT: OKAY. THANK YOU, SIR. I APPRECIATE YOUR  
3 COMMENTS.

4 MR. ADAMS: THANK YOU, YOUR HONOR.

5 THE COURT: YES. THANK YOU.

6 OKAY. MR. PLETCHER, PLEASE GO AHEAD, SIR.

7 MR. PLETCHER: THANK YOU, YOUR HONOR.

8 ALL HAIL. YOUR HONOR, IN THIS CASE, THE UNITED  
9 STATES IS RECOMMENDING A SENTENCE OF 78 MONTHS, IN THE MIDDLE  
10 OF THE GUIDELINE RANGE THAT THE PARTIES AGREE UPON. THAT  
11 SENTENCE IS SUFFICIENT BUT NOT GREATER THAN NECESSARY TO  
12 ACHIEVE ALL THE PURPOSES OF SENTENCING.

13 AND BEFORE I BEGIN, I WANT TO COMMENT ON MR. ADAMS'  
14 AND MR. MISIEWICZ'S PRESENTATION, WHICH WAS DECIDEDLY  
15 DIFFERENT IN TONE AND IN CONTENT THAN THE THINGS THAT WERE  
16 WRITTEN IN THEIR PAPERS AND EXPRESSED A GOOD DEAL MORE  
17 COMPLETE ACCEPTANCE OF RESPONSIBILITY AND CONTRITION THAN I  
18 HAD UNDERSTOOD COMING INTO THE HEARING TODAY.

19 THE SALIENT DIFFERENCES BETWEEN THIS CASE, YOUR  
20 HONOR, WARRANT THE UNITED STATES' RECOMMENDATION OF A SENTENCE  
21 15 MONTHS HIGHER THAN THE NEXT-HIGHEST SENTENCE ALREADY  
22 IMPOSED IN THIS CASE. THAT WAS THE SENTENCE THAT THE COURT  
23 IMPOSED ON ALEX WISIDIGAMA PREVIOUSLY. IT WARRANTS THE  
24 ADDITIONAL 30-PLUS MONTHS THAN WAS IMPOSED ON CAPTAIN DUSEK  
25 DURING OUR LAST SENTENCE, AND IT CERTAINLY, CERTAINLY WARRANTS

1 THE ADDITIONAL SENTENCE THAN WAS IMPOSED ON LESSER OFFICERS,  
2 LIEUTENANT COMMANDER MALAKI AND ENLISTED LS1 DAN LAYUG.

3 YOUR HONOR, AS WE HIGHLIGHTED IN OUR SENTENCING  
4 MEMORANDUM, THE COURT IS AT A SIGNIFICANT DISADVANTAGE IN THIS  
5 CASE BECAUSE THIS CASE PLED GUILTY. THERE'S AN AGREED-UPON  
6 STATEMENT OF FACTS, BUT THE COURT DIDN'T SIT THROUGH AN  
7 EIGHT-WEEK TRIAL. IT DIDN'T RECEIVE 500 OR A THOUSAND  
8 EXHIBITS INTO EVIDENCE. IT DOESN'T HAVE THE CONTEXT AND  
9 CIRCUMSTANCES OF THIS OFFENSE, AND SO WE ARE LEFT DURING  
10 SENTENCING TO DO OUR BEST AT ACCOMPLISHING THAT HERCULEAN  
11 TASK.

12 AS DAN DUSEK WAS LEAVING HIS POSITION AS DEPUTY N3 OF  
13 THE 7TH FLEET, COMMANDER MISIEWICZ WAS TAPPED TO TAKE OVER,  
14 AND LEONARD FRANCIS, PRIMARILY THROUGH ONE OF HIS COUNTRY  
15 MANAGERS IN JAPAN, ED ARUFFO, SET OUT TO EXPLORE WHETHER  
16 COMMANDER MISIEWICZ WOULD BE WILLING TO STEP INTO THE ROLE  
17 THAT DAN DUSEK HAD PROVIDED TO GDMA BEFORE HIM.

18 THE CONTEMPORANEOUS E-MAILS ARE SET OUT IN OUR  
19 PAPERS. MOST TELLING, "SO WE ARE CHANGING FACES BUT KEEPING  
20 LINES OF COMMUNICATION WITH THE 7TH FLEET." AND SO WAS THE  
21 FIRST OFFER OF A THING OF VALUE, TICKETS TO *THE LION KING* FOR  
22 HIM AND HIS FAMILY. AND THEN THE CONSPIRACY CONTINUED,  
23 INCREASINGLY LAVISH AND PRURIENT THINGS OF VALUE, SPIRALLING,  
24 FRANKLY, OUT OF CONTROL, ATTRIBUTABLE TO WHATEVER REASON:  
25 WORK, TEMPO, HIS PENDING DIVORCE, OR OTHER FACTORS.

1           COMMANDER MISIEWICZ'S BEHAVIOR WHEN BEING OFFERED  
2       THESE LUXURIOUS THINGS OF VALUE WAS HEDONISTICALLY  
3       UNRESTRAINED. WE SUBMITTED JUST ONE EXAMPLE, YOUR HONOR, THE  
4       VALENTINE'S DAY PARTY IN MANILA, FIGHT NIGHT, AND THE PICTURE,  
5       I THINK, DOES MORE THAN I COULD EVER SAY ABOUT THAT EVENT.

6           THE NEXT MONTH, LEONARD FRANCIS WAS IN THE PROCESS OF  
7       SETTING UP FOUR PROSTITUTES OVER THE COURSE OF THREE DAYS FOR  
8       COMMANDER MISIEWICZ AND FRIENDS IN SINGAPORE, ONLY INTERRUPTED  
9       BY THE TSUNAMI IN JAPAN. I'M REMINDED OF THE ADAGE OF A  
10      BUTTERFLY FLUTTERING ITS WINGS.

11          COMMANDER MISIEWICZ WILLINGLY AGREED TO ACCEPT THIS  
12      LAVISH AND LURID LIFESTYLE THAT GDMA OFFERED, NOT JUST  
13      WILLINGLY ACCEPT, BUT, AS TIME WENT ON, TO ASK FOR AND TO  
14      DEMAND A HOTEL IN THIS PORT, PROSTITUTES IN THIS PORT, TRAVEL  
15      FOR HIS FAMILY AGAIN AND AGAIN AND AGAIN. AND ULTIMATELY, AS  
16      THE DOCUMENTS PROVIDE, GDMA WAS ABLE TO HOOK HIM ON SOMETHING,  
17      MOSTLY TRAVEL AND ENTERTAINMENT, AND AT THAT POINT LEONARD  
18      FRANCIS AND ED ARUFFO BEGAN TO INCULCATE COMMANDER MISIEWICZ  
19      WITH GDMA'S BUSINESS PLAN. HE HAD WILLINGLY ACCEPTED THESE  
20      THINGS OF VALUE AND NOW IT WAS TIME TO GO TO WORK.

21          IT WAS CENTERED, AS ALWAYS, AS THE COURT HAS HEARD AD  
22      NAUSEAM, ON THE DIRECTIONALITY OF AIRCRAFT CARRIERS INTO  
23      PARTICULAR PORTS. BIG DECKS, AIRCRAFT CARRIERS, CBN'S, ALL  
24      TERMINOLOGY FOR THE SAME THING. DIRECT THESE LUCRATIVE PORT  
25      VISITS TO OUR PEARL PORTS: PORT KLANG CRUISE CENTER, PKCC,

1 SEPANGAR, ANYWHERE IN THAILAND, TO THE PLACES WHERE GDMA WAS  
2 PERPETRATING PERVASIVE FRAUD ON THE U. S. NAVY.

3 AND IN BETWEEN THESE THINGS, VACATION TRAVEL WAS  
4 LAYERED IN. THE JUNE 24TH, 2011, TRIP TO KUALA LUMPUR IN  
5 CAMBODIA, INCLUDING AN ENVELOPE STUFFED WITH CASH FOR  
6 WALKING-AROUND MONEY, ALL COURTESY OF GDMA.

7 AND ABOUT THAT TIME, YOUR HONOR, THE FLOODGATES  
8 OPENED, AND MR. MISIEWICZ BEGAN, IN EFFECT, WORKING FOR GDMA  
9 WITHIN THE 7TH FLEET. AND THAT'S A CHARACTERIZATION THAT  
10 COMMANDER MISIEWICZ DOES NOT AGREE WITH, AND I THINK THE  
11 RECORD WILL SPEAK FOR ITSELF ON THIS OCCASION. THERE ARE,  
12 LITERALLY, THOUSANDS, MAYBE UP, MAYBE UP TO 5,000 OR MORE,  
13 COMMUNICATIONS BETWEEN LEONARD FRANCIS OR HIS STAFF AT GDMA  
14 AND COMMANDER MISIEWICZ, TEXT MESSAGES, WHATSAPP MESSAGES,  
15 PERSONAL TELEPHONE CALLS, AND HOW MANY IN-PERSON MEETINGS  
16 WHERE ADDITIONAL BUSINESS AND PRIORITIES WERE DISCUSSED OVER  
17 THE COURSE OF HOURS, PUNCTUATED BY ENTERTAINMENT.

18 AND GDMA MARKED THIS MOMENT IN A SERIES OF EMAILS,  
19 AND THE COURT'S WELL AWARE OF THEM. WE GOT THEM. SMILEY  
20 FACE. ALL HAIL THE GODFATHER. AND COMMANDER MISIEWICZ BEGAN  
21 PASSING CLASSIFIED SHIP SCHEDULES, FULL WELL KNOWING THE RISK  
22 INVOLVED.

23 AND I NOTE PARENTHETICALLY, YOUR HONOR, THIS IS NOT  
24 THE RISK, AND THIS IS NOT WHAT I UNDERSTAND COMMANDER  
25 MISIEWICZ TO BE SAYING TODAY, BUT THIS IS WHAT HE SAID IN HIS

1 SENTENCING LETTER TO THE COURT: "I HAD NO RIGHT TO DECLARE  
2 MYSELF A DECLASSIFICATION AUTHORITY WHEN I SCRUBBED SHIP  
3 SCHEDULES AND THEN PASSED ON THE PORT CALL INFORMATION." THAT  
4 IS NOT WHAT HE DID. HE DID NOT DECLARE HIMSELF A  
5 DECLASSIFICATION AUTHORITY. HE ILLEGALLY PASSED CLASSIFIED  
6 INFORMATION TO LEONARD FRANCIS. THE PHRASEOLOGY OF THIS IS  
7 NOT AN APPROPRIATE DESCRIPTION OF WHAT HAPPENED, AND IT DOES  
8 NOT CAPTURE THE RISK INVOLVED.

9 THE NEXT SENTENCE, NOR DID HE DO THIS, "I ALSO DID  
10 NOT HAVE AUTHORITY TO ASSUME THE RISK I DID WHEN I ILLEGALLY  
11 PASSED THAT INFORMATION." HE DID NOT ASSUME THE RISK. THE  
12 UNITED STATES NAVY AND THE PEOPLE OF THE UNITED STATES ASSUMED  
13 THE RISK THAT THAT INFORMATION WOULD GO INTO SOMEONE ELSE'S  
14 HANDS. TO THE EXTENT THAT HE TRUSTED LEONARD FRANCIS, SO BE  
15 IT. WHAT HE CAN'T TRUST IS WHETHER THE CHINESE HAVE HACKED  
16 INTO LEONARD FRANCIS' COMPUTERS, WHETHER ANYONE ELSE IN GDMA  
17 IS WORKING FOR A HOSTILE FOREIGN NATION STATE OR WORSE. THE  
18 RISK WAS NOT HIS TO ASSUME BECAUSE THERE WAS NO CONSEQUENCE  
19 THAT WOULD BEFALL HIM IN THE EVENT THAT THINGS WENT  
20 DRAMATICALLY WRONG.

21 HE ALSO STARTED TO FILL GDMA'S BUSINESS PLAN: BIG  
22 DECKS TO PEARL PORTS. ON THIS POINT, THE DOCUMENTS, THE  
23 CONTEMPORANEOUS DOCUMENTS SPEAK FOR THEMSELVES AND PAINT  
24 CLEARLY FOR THE COURT A PICTURE OF WHAT WAS GOING ON. THE  
25 DOCUMENTS. "SEE, YOU ASK, I DELIVER." THAT'S A *QUID PRO QUO*.

1 THAT'S LANGUAGE OF *QUID PRO QUO* HAVING TO DO WITH INFLUENCING  
2 THE MOVEMENT OF SHIPS INTO PARTICULAR PORTS, AND THAT'S A  
3 REFRAIN HEARD THROUGHOUT: YOU ASK, I DELIVER.

4 THAT'S EVIDENCED BY THEIR INCREASINGLY CLOSE  
5 RELATIONSHIP AT THIS POINT. EVERY EMAIL BEGUN OR END WITH  
6 BRO, OR LITTLE BRO, LB, BIG BRO, AND EMAIL ACCOUNTS CREATED  
7 WITH THE SOLE PURPOSE OF EVADING DETECTION OF LAW ENFORCEMENT,  
8 INCORPORATING LEONARD FRANCIS' NAME INTO THE EMAIL ACCOUNT  
9 ITSELF.

10 MORE FROM THE DOCUMENTS. LETTER TO FRANCIS: "KEEP  
11 BIG DECKS AWAY FROM MANILA. FOCUS ON PKCC, LAEM CHABANG, AND  
12 PHUKET." COMMANDER MISIEWICZ: "WE'LL TRY TO WORK THE  
13 BUSINESS PLAN THIS WEEKEND." IT'S NOT EVEN YOUR BUSINESS  
14 PLAN. IT'S THE BUSINESS PLAN. IT'S RATIFIED AND AFFIRMED.  
15 "WE'LL TRY TO WORK THE BUSINESS PLAN THIS WEEKEND."

16 NEXT, "I'M FIGHTING HARD, ON GDMA'S BEHALF, TO  
17 MAINTAIN THE PORT VISIT OF THE ABRAHAM LINCOLN TO LAEM  
18 CHABANG." AND HE WAS SUCCESSFUL IN THE PHASE OF OPPOSITION,  
19 BUT THE USS ABRAHAM LINCOLN VISITED LAEM CHABANG AS SCHEDULED,  
20 WHICH, PUTTING HIS KNOWLEDGE OF THE FRAUD ASIDE FOR A MOMENT,  
21 RESULTED IN FACT IN OVER \$500,000 IN FRAUD PROCEEDS DIRECTLY  
22 TO THE POCKETS OF LEONARD FRANCIS AND GDMA.

23 NEXT, "I KNOW WE HAVE TO WORK PKCC AND SEPANGAR.  
24 NOW, THE INDEFINITE ARTICLE HAS BEEN REPLACED BY THE  
25 THIRD-PERSON PERSONAL PRONOUN. "I KNOW WE HAVE TO WORK PKCC



1 AND SEPANGAR," PUNCTUATED BY LUXURIOUS VACATIONS FOR HIMSELF  
2 AND HIS FAMILY, INCLUDING HIS REUNION TRIP TO CAMBODIA, ALL  
3 EXPENSES PAID BY YOUR FRIENDLY DEFENSE CONTRACTOR.

4 IT CONTINUES ON AND ON AND ON, AND THE EVENTS SPIRAL.  
5 WE OPAQUELY REFERENCE THE INCIDENT WHERE, BECAUSE OF THE  
6 FESTIVITIES ON THE PREVIOUS EVENING, COMMANDER MISIEWICZ BROKE  
7 CURFEW. HE WASN'T BACK TO THE SHIP WHEN HE HAD TO BE AND THE  
8 ADMIRAL REQUIRED ALL STAFF TO BE. SO, INSTEAD OF TAKING  
9 RESPONSIBILITY FOR THAT AND OWNING THAT MISTAKE, HE BOUGHT  
10 ATHLETIC GEAR SO HE COULD SORT OF RUN BACK TO THE SHIP AND  
11 PASS IT OFF AS HE WAS JUST OUT FOR A MORNING RUN.

12 LUXURY HOTEL ROOMS, PROSTITUTES, BOOZE, TRIPS,  
13 CLASSIFIED SCHEDULES, SHIPS MOVING FROM PORT TO PORT,  
14 INFLUENCE EXERCISED. AND LET'S BE CLEAR ON THAT POINT,  
15 BECAUSE IT'S SOMETHING SPENT QUITE A LOT OF TIME AT IN THE  
16 PAPERS. THE EVIDENCE SHOWS THAT HE USED AND EXERCISED HIS  
17 INFLUENCE TO BENEFIT GDMA. THAT'S ADMITTED IN THE PLEA. THAT  
18 WAS CLEARLY DESCRIBED BY MR. ADAMS IN HIS PRESENTATION. HE  
19 ADMITS THE EXAMPLES IN THE PLEA AGREEMENT ARE EXAMPLES OF  
20 THIS.

21 THE ALLEGATION HAS NEVER BEEN, AS TO THIS DEFENDANT  
22 OR ANY OTHER DEFENDANT, THAT HE SINGLE-HANDEDLY STEERED A SHIP  
23 INTO ANY PORT. THAT'S AN UNREASONABLE INFERENCE FROM WHAT THE  
24 UNITED STATES HAS ALLEGED. HE USED HIS SIGNIFICANT INFLUENCE  
25 IN THE UNITED STATES NAVY TO BENEFIT GDMA AS OPPORTUNITIES

1 AROSE.

2 READ THE FITNESS REPORTS. READ THE JUSTIFICATION FOR  
3 HIS LEGION OF MERIT AWARD. HE WAS TRUSTED IMPLICITLY, SO SAYS  
4 THE COMMANDER OF THE 7TH FLEET. HE HAD GAINED THE TRUST AND  
5 CONFIDENCE. HE WAS ABLE TO SINGLE-HANDEDLY, I THINK IT SAYS  
6 AT ONE POINT, MOBILIZE THE 7TH FLEET TO RESPOND TO THE TSUNAMI  
7 IN JAPAN. THESE THINGS BELIE THE IDEA THAT HE DIDN'T HAVE  
8 INFLUENCE TO DO ANYTHING. IT'S BELIED CERTAINLY BY THE  
9 CONTEMPORANEOUS EMAIL RECORD.

10 AS HE WROTE IN HIS PAPERS, WHICH I THINK IS A CANDID  
11 ADMISSION AND TOTALLY CONSISTENT WITH THE GOVERNMENT'S  
12 VIEWPOINT ON THIS, I THINK WE AGREE THAT HE WAS TRYING, AS HE  
13 SAW IT, TO ADVANCE THE INTERESTS OF THE NAVY AND GDMA, AND  
14 WHEN BOTH OF THOSE THINGS ALIGNED, HE STEPPED IN TO TRY TO  
15 INFLUENCE PORT VISITS: THE STENNIS TO PKCC; THE ABRAHAM  
16 LINCOLN TO LAEM CHABANG; THE STENNIS BACK TO PKCC; THE GEORGE  
17 WASHINGTON TO PKCC; AND THE STENNIS TO SEPANGAR.

18 AND WE HAVEN'T HAD THE OPPORTUNITY, YOUR HONOR, TO  
19 PRESENT THE TESTIMONY AND EVIDENCE FROM THE OTHER PEOPLE  
20 WORKING ON THE 7TH FLEET WHO WERE IN OPPOSITION TO SOME OR ALL  
21 OF THESE PORT VISITS, FOR VERY VALID REASONS. SO LET THE  
22 DOCUMENTS AND THE EMAILS SPEAK FOR THEMSELVES ON THAT POINT  
23 BECAUSE, FRANKLY, I DON'T THINK IT'S A MATTER OF AS MUCH  
24 CONTENTION AS COMMANDER MISIEWICZ SUGGESTS IN HIS PAPERS.

25 HE DOES CITE ONE EXAMPLE, MUMBAI, IN HIS RESPONSE,

1 WHERE HE CLAIMS THAT WAS AN EXAMPLE WHERE HE WAS PUSHING HARD  
2 FOR A PARTICULAR PORT VISIT, BUT THAT WAS NOT IN GDMA'S  
3 INTEREST. NOTHING COULD BE FURTHER, YOUR HONOR, FROM THE  
4 TRUTH. HE WAS CONSULTING WITH LEONARD FRANCIS IN THE  
5 BACKGROUND, AND LEONARD FRANCIS WAS PUSHING JUST AS HARD FOR  
6 THAT PORT VISIT TO MUMBAI (1) BECAUSE MUMBAI WAS OFF CONTRACT  
7 AND LEONARD FRANCIS WOULD HAVE HAD AN OPPORTUNITY TO BID ON  
8 IT; AND (2) HE WAS USING IT AS AN OPPORTUNITY TO UNDERMINE THE  
9 PRIMARY COMPETITOR IN INDIA, A COMPANY CALLED MLF. AND SO TO  
10 THE EXTENT THAT IT'S CLAIMED THAT THAT ONE HAD NO INFLUENCE OR  
11 NO CONNECTION TO GDMA IS FLAT WRONG.

12 NOVEMBER 29TH, 2012, YOUR HONOR, STANDS AS AN EVENT  
13 THAT SIGNIFICANTLY DIFFERENTIATES THIS CASE FROM THE OTHERS,  
14 AND ON THAT DATE COMMANDER MISIEWICZ AND ANOTHER NAVY OFFICER  
15 MET LEONARD FRANCIS IN JAPAN, AND COMMANDER MISIEWICZ PASSED  
16 TO LEONARD FRANCIS A SERIES, PROBABLY 40 OR MORE PAGES, OF  
17 CLASSIFIED SHIP SCHEDULES AND OTHER MATERIAL. THAT  
18 INFORMATION CONTAINED THEREIN, YOUR HONOR, CLASSIFIED  
19 INFORMATION THAT REMAINS CLASSIFIED AS WE STAND HERE TODAY  
20 ABOUT THE U. S. BALLISTIC MISSILE DEFENSE FORCES DEPLOYED  
21 THROUGHOUT ASIA.

22 THE PARTIES AGREE, YOUR HONOR, THAT THAT EVENT  
23 RESULTED IN A SIGNIFICANT DISRUPTION OF GOVERNMENT FUNCTION  
24 THAT WARRANTS A FOUR-LEVEL INCREASE IN THE GUIDELINE RANGE.  
25 IF YOU'RE LOOKING AS A MEANS TO DIFFERENTIATE, LET ME SAY, PUT

1 IT DIFFERENTLY. THE PRIMARY MEANS TO DIFFERENTIATE THIS CASE  
2 FROM THE OTHERS IS THAT BREACH OF CLASSIFIED INFORMATION, AND  
3 IT'S NOT LOST ON THE COURT THAT THAT EVENT BY ITSELF COULD  
4 HAVE BEEN CHARGED DIFFERENTLY.

5 IN ADDITION, ON THAT DAY, COMMANDER MISIEWICZ  
6 DISCUSSED AT LENGTH WITH LEONARD FRANCIS A POTENTIAL  
7 REPLACEMENT FOR HIMSELF IN THE CONSPIRACY AS HE WAS SET TO  
8 MOVE TO HIS NEXT POSITION IN THE NAVY. HE WAS RECRUITING HIS  
9 OWN REPLACEMENT SO THAT LEONARD FRANCIS WOULDN'T LOSE THE  
10 AVAILABILITY OF THESE CLASSIFIED SCHEDULES AND OTHER INTERNAL  
11 INFORMATION THAT HE SO COVETED.

12 THESE CONSPIRATORS WERE ALSO FASTIDIOUS IN THEIR DUE  
13 CAUTION AND CARE TO SHIELD THEIR RELATIONSHIP FROM THE LIGHT  
14 OF DAY. COMMANDER MISIEWICZ DIDN'T REVEAL THIS RELATIONSHIP  
15 IN HIS SECURITY CLEARANCE FORMS, AS REQUIRED, NOTWITHSTANDING  
16 THE THOUSANDS OF TEXTS AND EMAILS TO LEONARD FRANCIS,  
17 NOTWITHSTANDING, FRANKLY, THE COMPROMISED SERIES OF SOCIAL  
18 INCIDENTS IN WHICH HE ENGAGED WITH LEONARD FRANCIS.

19 BUT, AS THE COURT KNOWS, LEONARD FRANCIS WAS ALSO  
20 LEARNING FROM NCIS SUPERVISOR SPECIAL AGENT JOHN BELIVEAU  
21 ABOUT HOW THE INVESTIGATIONS WERE UNFOLDING. HE WAS GETTING  
22 INSIDE INFORMATION FROM BENEDICT ARNOLD INSIDE OUR CAMP, AND  
23 LEONARD FRANCIS WAS PASSING THAT INFORMATION ALONG TO  
24 COMMANDER MISIEWICZ AS IT WAS RELEVANT.

25 FIRST, HE LET COMMANDER MISIEWICZ KNOW THAT THE

1 GOVERNMENT HAD ACCESSED HIS EMAIL ACCOUNT, AND THAT INSPIRED  
2 COMMANDER MISIEWICZ TO DELETE BOTH OF THE EMAIL ACCOUNTS, YOUR  
3 HONOR, THAT ARE CITED IN THE PAPERS, THE MUSTFIVE ACCOUNT AND  
4 THE LITTLEBROLGF ACCOUNT. THOSE ACCOUNTS WERE DELETED FROM  
5 EXISTENCE BECAUSE OF LEONARD FRANCIS' WARNINGS ABOUT THE  
6 INVESTIGATION.

7 BUT IT DIDN'T STOP HIM. HE STARTED A NEW COVERT  
8 EMAIL ACCOUNT THAT THE UNITED STATES DIDN'T LEARN OF UNTIL  
9 QUITE LATE IN THE DAY, AN EMAIL ACCOUNT THAT IS  
10 CROCKBAITWITHRICE2013CBWR2013@GMAIL.COM, FROM WHICH HE SENDS  
11 TO LEONARD FRANCIS HIS LEGION OF MERIT AWARD, WRITING, "TEAM  
12 BRO. COULDN'T HAVE DONE SEVERAL THINGS WITHOUT KNOWING GROUND  
13 TRUTH FROM UNKNOWN SOURCES. HEE, HEE, HEE."

14 AND ON JULY 19TH, 2013, LEONARD FRANCIS SENT HIM AN  
15 EMAIL SAYING, "THE CASES ARE CLOSING. THE CASES ARE CLOSING."  
16 NOW, THEY ARGUE IN THEIR RESPONSE THAT IT WAS AN ESPIONAGE  
17 CASE, THAT IT WAS SOMEHOW UNRELATED. THE ESPIONAGE CASE  
18 INVOLVED LEONARD FRANCIS AND THE RECEIPT OF THINGS OF VALUE  
19 FROM LEONARD FRANCIS IN RETURN FOR THE PASSING OF INFORMATION.

20 YOUR HONOR, THESE FACTS, THE NATURE AND CIRCUMSTANCES  
21 OF THIS OFFENSE ALONE SUGGEST THE NEED FOR A WITHIN-GUIDELINE  
22 RANGE SENTENCE OF 78 MONTHS. I THINK THE CONCLUSION IN THIS  
23 REGARD IS UNMISTAKABLE. THE FACTS ARE EGREGIOUS, THE  
24 CONSEQUENCES PERNICIOUS, EXAGGERATED THROUGHOUT BY NOT JUST  
25 HIS RANK OF COMMANDER AND THEN CAPTAIN-SELECT, BUT REALLY HIS

1 POSITION WITHIN THE 7TH FLEET, THE TRUST AND CONFIDENCE THAT  
2 HE HAD GAINED FROM THE COMMANDER OF THE 7TH FLEET AND,  
3 FRANKLY, THE INFLUENCE THAT THAT POSITION OF OPERATIONS HOLDS  
4 OVER THE ENTIRETY OF THE 7TH FLEET.

5 THE TENS OF THOUSANDS OF -- I'M SORRY. THE  
6 THOUSANDS, THOUSANDS OF EMAILS AND TEXT MESSAGES AND PERSONAL  
7 CONVERSATIONS. THE TENS OF THOUSANDS OF DOLLARS OF THINGS OF  
8 VALUE CAUSING DEMONSTRABLE LOSS TO THE GOVERNMENT. THE  
9 CLASSIFIED INFORMATION ON SHIP SCHEDULES, ON SUBMARINE  
10 SCHEDULES, THE HARM OF WHICH I DON'T THINK I NEED TO COVER  
11 AGAIN WITH THE COURT. THE INTERNAL INFORMATION ABOUT THE  
12 NAVY'S WORKINGS AND BUSINESS. AND THEN NOVEMBER 29TH, 2012,  
13 CLASSIFIED BREACH THAT CONTAINED THE BALLISTIC MISSILE  
14 INFORMATION.

15 COUPLE THAT WITH THE PORT VISIT INFLUENCE, OF THE  
16 FIVE PORT VISITS THAT ARE ENUMERATED, OF RECRUITING HIS  
17 REPLACEMENT, OF THE ONGOING AND PERVASIVE STEPS TO OBSCURE AND  
18 OBSTRUCT KNOWLEDGE OF LAW ENFORCEMENT, KNOWING FULL WELL THAT  
19 THERE WAS AT LEAST ONE CORRUPTION INVESTIGATION INVOLVING HIM.  
20 THAT THIS WAS NOT A UNITARY ACT, YOUR HONOR. THIS WAS  
21 PERVASIVE OVER TWO YEARS IN HIS POSITION AS DEPUTY N3 OF THE  
22 7TH FLEET, THAT THESE ACTS WERE WELL CONSIDERED.

23 THERE ARE NO SENTENCING DISPARITIES THAT WOULD RESULT  
24 IN IMPOSING THE GOVERNMENT'S RECOMMENDED 78-MONTH SENTENCE. A  
25 COUPLE OF THINGS I'VE SPOKEN TO WOULD DIFFERENTIATE THE

1 SENTENCE, THE FIRST OF WHICH, WHICH IS ABUNDANTLY CLEAR, IS  
2 THAT THE SENTENCE IS WITHIN THE GUIDELINES, AS WERE THE OTHER  
3 SENTENCES THAT THE COURT IMPOSED, AND SO THE GUIDELINES AND  
4 THE SPECIFIC OFFENSE CHARACTERISTICS OF THIS OFFENSE ACCOUNT  
5 FOR THE DIFFERENCES. PRIMARILY, A FOUR-LEVEL INCREASE FOR THE  
6 SIGNIFICANT DISRUPTION OF GOVERNMENT FUNCTION OCCASIONED BY  
7 THE NOVEMBER 29TH, 2012, CLASSIFIED INFORMATION BREACH, AND AN  
8 ADDITIONAL TWO-LEVEL INCREASE BASED ON THE AMOUNT OF LOSS TO  
9 THE UNITED STATES, ALL OF WHICH THE PARTIES AGREE ARE THE  
10 APPROPRIATE CALCULATION.

11 THE OTHER DEFENDANTS WERE NO MORE INVOLVED IN THE  
12 PERVASIVE FRAUD COMMITTED BY GDMA AND LEONARD FRANCIS THAN  
13 COMMANDER MISIEWICZ WAS, AND THE CHARACTERIZATION BY MR. ADAMS  
14 THAT THEY WERE OR HAD ADMITTED THAT THEY WERE IS FLAT WRONG.  
15 THEY WERE NOT PART OF SUBMITTING FALSE INVOICES. THOSE OTHER  
16 DEFENDANTS WERE NOT PART OF CREATING FALSE BIDS BY  
17 SUBCONTRACTORS, AND NO ALLEGATIONS BY THE UNITED STATES HAVE  
18 EVER SAID THEY WERE.

19 WHAT THEY ALL WERE, INCLUDING COMMANDER MISIEWICZ,  
20 WAS PART OF A PERNICIOUS CYCLE OF CRIME, ONE EVENT FEEDING ON  
21 THE NEXT, FEEDING ON THE NEXT, AND AROUND AND AROUND WE GO FOR  
22 HOW MANY YEARS. FRAUD-GENERATED PROCEEDS TO PAY BRIBES. AN  
23 INFLUENCE WITHIN THE 7TH FLEET CREATED THE OPPORTUNITY TO  
24 COMMIT MORE FRAUD. THAT'S THE REALITY. THAT ISN'T AN  
25 ALLEGATION. THAT'S THE REALITY OF THIS CRIME, IRRESPECTIVE OF

1 ANY PARTICULAR MEMBER OF THE UNITED STATES NAVY'S KNOWLEDGE OF  
2 THE FRAUD THAT WAS BEING PERPETRATED. AND THAT, YOUR HONOR,  
3 IS NOT A MEANS TO DIFFERENTIATE THESE CASES.

4 THE SENTENCING GUIDELINES PROVIDE THE MEANS TO  
5 DIFFERENTIATE THESE CASES, AS THEY HAVE IN THE PREVIOUS CASES.  
6 THEY SET AN UNDERSTANDING OF WHAT THIS CONDUCT WARRANTS, AND  
7 IN THIS CASE THE OTHER FACTORS THAT THE COURT MUST CONSIDER  
8 DIRECT THE COURT TO IMPOSE A SENTENCE IN THE MIDDLE OF THE  
9 GUIDELINES.

10 THE DEFENDANT'S RANK. THE PERVASIVENESS AND DURATION  
11 OF THE SCHEME. THE PERNICIOUS EFFECTS AND CONSEQUENCES THAT  
12 THE LEAK OF CLASSIFIED INFORMATION HAS TO THE SAFETY OF THIS  
13 COUNTRY. THE GENERAL DETERRENCE NECESSARY AS MORE PEOPLE ARE  
14 PUT INTO THESE SIMILAR POSITIONS, AS THE NAVY SAILS THROUGHOUT  
15 THE WORLD, AND A WAY THAT IS INCREASING, NOT DECREASING, AS A  
16 WAY THAT WE PIVOT. TO ASIA, AS A WAY THAT THE NAVY IS GOING  
17 TO CONTINUE TO HAVE AN INCREASING ROLE IN POLICING THAT  
18 REGION.

19 JUST LAST WEEK, I THINK SECRETARY OF DEFENSE ASH  
20 CARTER WAS REMARKING THAT THE CHINESE HAVE DECIDED TO BUILD  
21 ANOTHER OUTPOST ON SCARBOROUGH SHOAL, 120 MILES FROM MANILA.  
22 THE NAVY IS GOING TO CONTINUE TO BE IN THIS REGION AS WE  
23 CONFRONT HOSTILITIES OR PERCEIVED HOSTILITIES FROM OTHER  
24 COUNTRIES, AND GENERAL DETERRENCE IS NECESSARY TO SEND THE  
25 APPROPRIATE MESSAGE THAT SUCH CONDUCT, HOWEVER CHARACTERIZED,



1 IS ILLEGAL AND UNWARRANTED.

2 IT PROMOTES RESPECT FOR THE LAW, SUGGESTING THAT,  
3 REGARDLESS OF RANK, NO ONE IS ABOVE THE LAW.

4 YOUR HONOR, ADMIRAL YUEN, WHO WAS HERE AND SAID IT  
5 BEFORE THE COURT, AND I WILL REPEAT IT AGAIN, NO AMOUNT OF  
6 MONEY, NO AMOUNT OF MONEY, YOUR HONOR, IS WORTH SACRIFICING  
7 WHAT WE OWE OUR SHIPMATES AND THE U. S. NAVY.

8 THANK YOU, YOUR HONOR.

9 THE COURT: THANK YOU.

10 LET ME HEAR FROM PROBATION, AND THEN I'LL ASK YOU IF  
11 YOU HAVE SOMETHING. GO AHEAD.

12 I SHOULD INDICATE THAT THERE WERE OBJECTIONS TO THE  
13 PSR, BUT THE ADDENDUM TO THE PSR, IN THE COURT'S MIND, DEALS  
14 WITH THEM, AND I THINK THE DEFENSE WOULD AGREE THAT YOU'VE  
15 ACCEPTED THE CLARIFICATION. CLEARLY, THIS WAS AN ENORMOUS  
16 CASE FROM A DISCOVERY STANDPOINT AND YOU'VE HAD LIMITED TIME  
17 COMPARED TO DEFENSE COUNSEL. SO THEY'VE MADE SOME  
18 CLARIFICATIONS, I'LL CALL THEM. YOU'VE ACCEPTED THEM, AND I  
19 THINK THAT DEALS ADEQUATELY WITH THE OBJECTIONS IF DEFENSE  
20 COUNSEL AGREE.

21 MR. ADAMS: YES, WE AGREE, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU.

23 ANYTHING YOU WOULD LIKE TO ADD TO ANYTHING THIS  
24 MORNING?

25 MR. TORRES: THERE IS NOTHING ADDITIONAL TO INCLUDE,

1 YOUR HONOR.

2 THE COURT: OKAY. THANK YOU VERY MUCH.

3 MR. ADAMS, GO AHEAD.

4 MR. ADAMS: YOUR HONOR, IF I COULD JUST MAKE --

5 THE COURT: OF COURSE.

6 MR. ADAMS: -- A COUPLE OF OBSERVATIONS AND COMMENTS.

7 IT'S CLEAR THAT THE GOVERNMENT CONTINUES TO FAULT  
8 MICHAEL MISIEWICZ FOR THE PERVASIVE GDMA FRAUD THAT HE DID NOT  
9 KNOW ABOUT. THE PORT VISIT DECISION PROCESS IS  
10 EXTRAORDINARILY COMPLEX. MUCH OF IT IS CLASSIFIED. THE  
11 SCHEDULES FROM NOVEMBER 29, 2012, WE NEVER SAW THOSE RECORDS,  
12 SO WE REALLY CAN'T ADDRESS THEM, BECAUSE THEY'RE CLASSIFIED  
13 AND THEY REMAIN CLASSIFIED.

14 BUT THE DISCOVERY THAT WE DID RECEIVE DEMONSTRATES  
15 FOR US THAT THE PEARL PORT VISITS THAT WERE BEING DEMANDED BY  
16 LEONARD FRANCIS AND GDMA ACTUALLY DECREASED UNDER MICHAEL  
17 MISIEWICZ'S WATCH, AND THE PORT VISITS, THE PEARL PORT VISITS  
18 THAT LEONARD FRANCIS DEMANDED, OR THE PORTS THAT HE DID NOT  
19 WANT -- I'M SORRY -- HONG KONG, SINGAPORE, MANILA, THOSE PORT  
20 VISITS ACTUALLY INCREASED, AND WE BASE THAT ON THE RECORDS  
21 THAT WE RECEIVED IN DISCOVERY AND OUR ANALYSIS OF THOSE  
22 RECORDS.

23 THE EMAIL ACCOUNTS, THE ACCOUNTS THEMSELVES WERE NOT  
24 DELETED. THERE MAY HAVE BEEN AN ATTEMPT TO DELETE, BUT THEY  
25 WERE RECOVERED AND WE HAD THEM IN DISCOVERY.

1                   AND I DIDN'T MEAN TO SUGGEST THAT THE OTHER  
2                   DEFENDANTS, INCLUDING LIEUTENANT COMMANDER MALAKI, ACTUALLY  
3                   CREATED FALSE INVOICES. WHAT THEY DID WAS, THEY KNOWINGLY  
4                   PROVIDED LEONARD FRANCIS WITH COMPETITORS' PRICING  
5                   INFORMATION, COMPETITORS' BIDS AND OTHER CONTRACT INFORMATION  
6                   SO THAT GDMA COULD CREATE INVOICES AND CREATE CONTRACTS THAT  
7                   WOULD ASSURE THAT THE CONTRACTS WOULD GO TO GDMA AS RECENTLY  
8                   AS 2011.

9                   AND SO WHAT WE'VE TRIED TO DO IS COME TO THE COURT  
10                  WITH AN EVIDENCE-BASED ANALYSIS OF WHAT WENT ON, AND WE DON'T  
11                  THINK THAT CIRCLE OF FRAUD INCLUDED MICHAEL MISIEWICZ AT ALL.  
12                  WHAT HE DID AND WHAT HE DID THAT WAS WRONG WAS HE TOOK THINGS  
13                  OF VALUE. HE TOOK TRAVEL. HE TOOK ENTERTAINMENT. HE TOOK  
14                  THOSE THINGS AND THEN HE GOT HIMSELF -- HE MADE DECISIONS AS A  
15                  COMMANDER IN THE NAVY. HE MADE DECISIONS ON PORT VISITS. HE  
16                  MADE -- HE WEIGHED IN ON PORT VISITS, BUT HIS POSITION WAS  
17                  COMPROMISED BY THE THINGS OF VALUE THAT HE TOOK WHEN HE JOINED  
18                  THAT CONSPIRACY WITH LEONARD FRANCIS. BUT HE DID NOT GET  
19                  INVOLVED IN THE FRAUD SIDE OF IT AT ALL, AND WE THINK THAT'S A  
20                  MAJOR DISTINCTION. WE THINK THAT'S WHY A SENTENCE OF 41  
21                  MONTHS IS SUFFICIENT, NOT GREATER THAN NECESSARY.

22                  THANK YOU, YOUR HONOR.

23                  THE COURT: OKAY.

24                  IS THE MATTER SUBMITTED?

25                  MR. PLETCHER, IS THERE ANYTHING FURTHER, SIR?

1 MR. PLETCHER: NO. THANK YOU, YOUR HONOR.

2 THE COURT: OKAY.

3 THE COURT HAS ADEQUATE INFORMATION TO EXERCISE  
4 SENTENCING DISCRETION THIS MORNING, AND I HAVE AN INCREDIBLE  
5 AMOUNT OF INFORMATION.

6 (OFF-THE-RECORD DISCUSSION BETWEEN THE COURT AND THE  
7 COURTROOM CLERK)

8 THE COURT: OH, YES. WHOEVER WOULD LIKE TO STAND AT  
9 THE PODIUM WITH MR. MISIEWICZ, PLEASE COME FORWARD. MAYBE  
10 BOTH COUNSEL AND MR. MISIEWICZ, IF YOU WOULD PLEASE MOVE  
11 FORWARD. THANK YOU.

12 I HAVE AN INCREDIBLE AMOUNT OF INFORMATION THAT'S  
13 BEEN PROVIDED, AND AS I INDICATED, I'VE GONE THROUGH ALL OF  
14 IT. SO I HAVE ADEQUATE INFORMATION, AND I LOOK AT A NUMBER OF  
15 THINGS. AS HAS ALREADY BEEN INDICATED, I LOOK FOR A SENTENCE  
16 THAT'S SUFFICIENT BUT NOT GREATER THAN WHAT'S NECESSARY GIVEN  
17 THE FACTS AND CIRCUMSTANCES OF THIS CASE. I MUST MAKE AN  
18 ACCURATE GUIDELINE CALCULATION, BUT I DO HAVE DISCRETION TO  
19 MOVE WITHIN, CERTAINLY WITHIN THE GUIDELINE RANGE OR BELOW OR  
20 ABOVE THE GUIDELINE RANGE AS THIS COURT MIGHT DEEM  
21 APPROPRIATE.

22 IN READING ALL OF THE LETTERS, IT BECAME CLEAR THAT  
23 SO MANY PEOPLE ASKED THAT THE COURT TAKE INTO ACCOUNT  
24 EVERYTHING ABOUT MR. MISIEWICZ, AND CERTAINLY THE COURT DOES  
25 THAT. AND THE LETTERS CERTAINLY GAVE ME A SENSE OF EVERYTHING

1 THAT YOU BRING BEFORE THE COURT, SIR, AND I DO TAKE THAT INTO  
2 ACCOUNT. YOUR VERY EXTRAORDINARY MILITARY CAREER, HOW YOU  
3 CAME TO THIS COUNTRY, A VARIETY OF THINGS WERE POINTED OUT IN  
4 GREAT DETAIL, AND I APPRECIATE THAT. YOUR RISE IN THE NAVY  
5 WAS -- TO SAY IT WAS REMARKABLE WOULD BE AN UNDERSTATEMENT.  
6 YOU ROSE TO THE RANK OF COMMANDER AND CAPTAIN-SELECT, AND  
7 THAT'S QUITE EXTRAORDINARY. IT CARRIES -- THAT RANK CARRIES  
8 WITH IT A GREAT DEAL OF POWER, A GREAT DEAL OF RESPECT, AND  
9 THAT'S ACKNOWLEDGED, I THINK, IN THE NAVY ITSELF, OBVIOUSLY,  
10 BUT ALSO THROUGHOUT THIS COUNTRY.

11 IN RECOGNIZING THAT, IT MAKES THE CONDUCT MORE  
12 AGGRAVATED TO THE COURT, THOUGH, BECAUSE THE POWER AND THE  
13 INFLUENCE THAT YOU HAD WAS QUITE EXTRAORDINARY, AND THEN YOU  
14 BASICALLY, OVER A CONSIDERABLE PERIOD OF TIME -- SEVERAL OF  
15 THE LETTERS SAY IT'S NOT JUST ONE INCIDENT, CONSIDER THE WHOLE  
16 PERSON. WELL, I WOULD HAVE TO SUGGEST THAT THIS WASN'T JUST  
17 ONE INCIDENT. IT WASN'T WHAT WE SOMETIMES SAY IN CRIMINAL  
18 CASES, IT WASN'T AN ABERRATION. IT WAS A LENGTHY PERIOD OF  
19 TIME FOR YOU TO REFOCUS, GET YOUR MORAL COMPASS BACK AND DO  
20 THE RIGHT THING, BUT IT DIDN'T HAPPEN. THIS EXTENDED OVER A  
21 PERIOD OF TIME THAT YOU CONSPIRED WITH MR. FRANCIS OVER  
22 THOUSANDS OF TIMES, BETRAYING, SIR, YOUR COUNTRY AND YOUR  
23 SHIPMATES. THE DECISIONS THAT YOU PARTICIPATED IN WERE  
24 INFLUENCED IN AN ATTEMPT TO PROMOTE GDMA AND YOUR OWN  
25 SELF-INTEREST, AGAIN AT THE EXPENSE OF YOUR SHIPMATES AND THIS

1 COUNTRY.

2 SO I THINK MR. ADAMS SAID THIS, AND IT'S TRUE, THIS  
3 IS A TRAGEDY. IT'S A TRAGEDY FOR YOU AND EVERYBODY IN THIS  
4 ROOM. IT'S AN EQUAL TRAGEDY FOR THE UNITED STATES NAVY AND  
5 FOR THIS COUNTRY TO HAVE HAD THIS SORT OF EVENT, SERIES OF  
6 EVENTS AND CIRCLE OF FRAUD, CONSPIRACY, HOWEVER YOU WOULD LIKE  
7 TO CHARACTERIZE IT, OCCUR.

8 I'M GOING TO BEGIN BY MAKING THE FINDINGS. I DON'T  
9 BELIEVE THERE'S ANY DISAGREEMENT ON THE GUIDELINE FINDINGS. I  
10 THINK THE DEFENSE IS ASKING THE COURT TO VARY DOWNWARD THROUGH  
11 3553(A) TO REACH THE REQUESTED SENTENCE. BUT LET ME GO  
12 THROUGH THIS AT THIS JUNCTURE.

13 THE BASE OFFENSE LEVEL FOR THIS, THESE OFFENSES, AND  
14 YOU'VE ENTERED A PLEA TO TWO COUNTS, IS A 14. THERE'S A PLUS  
15 TWO ADDED BECAUSE THERE WAS MORE THAN ONE BRIBE. BECAUSE OF  
16 THE AMOUNT OF LOSS, A PLUS SIX IS ADDED. AND BECAUSE OF YOUR  
17 RANK AND THE SENSITIVE NATURE OF YOUR POSITION IN THE  
18 MILITARY, MR. MISIEWICZ, A PLUS FOUR IS ADDED. AND THOSE  
19 NUMBERS COME OUT TO A 26. SO THAT'S THE ADJUSTED OFFENSE  
20 LEVEL THAT I'M DEALING WITH, MR. MISIEWICZ.

21 YOU'VE ACCEPTED RESPONSIBILITY, AND THAT PERMITS ME  
22 TO TAKE A THREE-POINT REDUCTION, AND THE TOTAL OFFENSE LEVEL  
23 IS NOW A 23. YOU HAVE NO CRIMINAL HISTORY POINTS, SIR.  
24 YOU'RE IN CRIMINAL HISTORY CATEGORY I. THERE'S A PLUS FOUR  
25 ADDED FOR THE DISRUPTION OF GOVERNMENTAL FUNCTION, AND THAT'S

1 THE DATE AND EVENT OF THE TURNOVER OF THE BALLISTIC DEFENSE  
2 MISSILE INFORMATION, AND I THINK THAT'S APPROPRIATELY APPLIED,  
3 AND I BELIEVE IT'S AGREED TO THROUGH THE PLEA AGREEMENT. SO  
4 THAT TAKES ME TO A TOTAL OFFENSE LEVEL OF 27, AND AT 27, ONE,  
5 THE RANGE OF IMPRISONMENT IS 70 TO 87 MONTHS.

6 SO THE QUESTION BECOMES AT THIS JUNCTURE, WHAT, IF  
7 ANY, DISCRETION SHOULD THIS COURT EXERCISE TO GO BELOW OR  
8 ABOVE THE GUIDELINE THAT I'M DEALING WITH? I BELIEVE THE  
9 GUIDELINE CALCULATION THAT I HAVE MADE IS AN ACCURATE ONE.

10 AND IN LOOKING AT THE 3553(A) FACTORS, WHICH IS A  
11 SERIES OF FACTORS SET FORTH IN THE CODE THAT I MUST CONSIDER,  
12 TITLE 18 UNITED STATES CODE 3553(A), I LOOK AT THE NATURE AND  
13 THE CIRCUMSTANCES OF THE OFFENSE, AND I'VE SENTENCED A NUMBER  
14 OF PEOPLE IN THIS CASE ALREADY. I'M FAMILIAR WITH THE CASE.  
15 I SPENT THE BETTER PART OF THIS WEEK READING EVERYTHING THAT'S  
16 BEEN SUBMITTED. I THINK I KNOW YOUR HISTORY AND  
17 CHARACTERISTICS, SIR, AND I MUST TAKE ALL OF THOSE INTO  
18 ACCOUNT. YOUR HISTORY IN THE NAVY, YOUR HISTORY IN COMING TO  
19 THIS COUNTRY ARE QUITE REMARKABLE.

20 I NEED TO CONSIDER THE SERIOUSNESS OF THIS OFFENSE,  
21 AND I THINK IT'S EXTRAORDINARILY SERIOUS, MAYBE ONE OF THE  
22 MOST SERIOUS THAT I'VE HAD DURING MY TIME ON THE BENCH.

23 I NEED TO PROMOTE RESPECT FOR THE LAW AND JUST  
24 PUNISHMENT FOR WHAT'S OCCURRED HERE.

25 I NEED TO PROTECT THE PUBLIC.

1 I NEED TO CONSIDER SPECIFIC DETERRENCE. I DON'T  
2 THINK, MR. MISIEWICZ, YOU'LL EVER BE BACK HERE IN FRONT OF ME.  
3 I DON'T DOUBT THAT. BUT I THINK, I THINK THE GENERAL  
4 DETERRENCE MESSAGE NEEDS TO BE A SIGNIFICANT ONE, BECAUSE WE  
5 OPERATE IN AN ENORMOUS SYSTEM WITH A LOT OF THINGS OR A LOT OF  
6 MOVING PARTS, AS THIS CASE WELL POINTED OUT.

7 I NEED TO AVOID UNWARRANTED SENTENCING DISPARITIES,  
8 AND I NEED TO PROVIDE RESTITUTION.

9 SO I'VE SPENT A GREAT DEAL OF TIME THINKING ABOUT  
10 THIS, AS YOU MIGHT IMAGINE, AND I DECLINE TO EXERCISE  
11 DISCRETION TO GO BELOW THIS GUIDELINE RANGE. I DON'T THINK  
12 IT'S WARRANTED IN THIS CASE.

13 I DO TAKE INTO ACCOUNT THE MILITARY CAREER AND THE  
14 POSITIVE THINGS THAT HAVE BEEN SAID ON YOUR BEHALF. AND IN  
15 SAYING THAT, MR. MISIEWICZ, THAT'S THE REASON I'M NOT GOING  
16 ABOVE GUIDELINE AND I'M STICKING WITH A MID-RANGE OF 78 MONTHS  
17 IN THE CUSTODY OF THE BUREAU OF PRISONS. I BELIEVE THAT'S  
18 SUFFICIENT BUT NOT GREATER THAN WHAT'S NECESSARY GIVEN THE  
19 FACTS OF YOUR CASE.

20 I'M GOING TO FOLLOW THAT WITH A THREE-YEAR PERIOD OF  
21 SUPERVISED RELEASE. DURING THOSE THREE YEARS, YOU'RE NOT TO  
22 VIOLATE ANY LAWS, STATE, FEDERAL, OR LOCAL, OR YOU COULD BE  
23 BROUGHT BACK BEFORE THE COURT, SIR, AND YOU COULD SERVE  
24 ADDITIONAL TIME IN CUSTODY, UP TO THE THREE YEARS.

25 ALL THE STANDARD CONDITIONS OF SUPERVISION WILL APPLY



1 DURING THOSE THREE YEARS, BUT IN ADDITION THE FOLLOWING  
2 SPECIAL CONDITIONS WILL APPLY.

3 THE FIRST IS THAT YOU SUBMIT YOUR PERSON, PROPERTY,  
4 RESIDENCE, OFFICE, OR VEHICLE TO A SEARCH CONDUCTED BY  
5 PROBATION, PROVIDED THE SEARCH IS DONE AT A REASONABLE TIME,  
6 IN A REASONABLE MANNER, BASED ON A REASONABLE SUSPICION OF  
7 CONTRABAND OR EVIDENCE OF A VIOLATION OF A CONDITION OF YOUR  
8 RELEASE. IF YOU FAIL TO SUBMIT TO A SEARCH, THAT COULD BE  
9 GROUNDS FOR REVOCATION, AND WHOEVER LIVES WITH YOU MUST KNOW  
10 THAT THE HOME COULD BE SUBJECT TO SEARCH PURSUANT TO THIS  
11 CONDITION.

12 SECOND SPECIAL CONDITION: PROVIDE COMPLETE  
13 DISCLOSURE OF YOUR PERSONAL AND BUSINESS FINANCIAL RECORDS TO  
14 PROBATION AS REQUESTED.

15 THIRD IS: NOTIFY THE COLLECTIONS UNIT OF THE  
16 U. S. ATTORNEY'S OFFICE OF ANY INTEREST AND PROPERTY OBTAINED  
17 DIRECTLY OR INDIRECTLY, INCLUDING ANY INTEREST OBTAINED UNDER  
18 ANY OTHER NAME OR ENTITY, INCLUDING A TRUST, PARTNERSHIP, OR  
19 CORPORATION, UNTIL YOUR FINE OR RESTITUTION ARE PAID IN FULL,  
20 AND I'LL TALK ABOUT THOSE IN JUST A MOMENT.

21 AND FOURTH: NOTIFY THE COLLECTIONS UNIT OF THE  
22 UNITED STATES ATTORNEY'S OFFICE BEFORE TRANSFERRING ANY  
23 INTEREST IN PROPERTY OWNED DIRECTLY OR INDIRECTLY, INCLUDING  
24 ANY INTEREST HELD OR OWNED UNDER ANY OTHER NAME OR ENTITY,  
25 INCLUDING A TRUST, PARTNERSHIP, OR CORPORATION.

1 I THINK THE RESTITUTION AMOUNT THAT'S AGREED UPON IS  
2 95,000. IS THAT CORRECT?

3 MR. ADAMS: IT IS, YOUR HONOR.

4 THE COURT: OKAY. SO I'M ORDERING \$95,000 IN  
5 RESTITUTION.

6 I UNDERSTAND EVERYBODY'S POSITION ON THIS, BUT I AM  
7 ORDERING A HUNDRED-THOUSAND-DOLLAR FINE AND A SPECIAL  
8 ASSESSMENT OF \$200.

9 NOW, I WILL CERTAINLY ENTERTAIN, AND I DO BELIEVE  
10 THERE'S A REQUEST FOR SELF-SURRENDER ON AUGUST 1ST OF THIS  
11 YEAR. I NEGLECTED TO ASK THE GOVERNMENT IF THERE'S ANY  
12 OBJECTION.

13 MR. PLETCHER: THERE IS NOT.

14 THE COURT: OKAY. THANK YOU.

15 MR. TORRES: YES, YOUR HONOR.

16 THE COURT: LET'S DO A PAYMENT SCHEDULE.

17 MR. TORRES: YES, YOUR HONOR. IN ADDITION TO THAT,  
18 WOULD THE COURT CARE TO DIFFERENTIATE BETWEEN THE TWO COUNTS?

19 THE COURT: OH, I WILL. THANK YOU, THANK YOU.

20 I'M GOING TO INDICATE THAT THIS IS ON EACH COUNT TO  
21 RUN CONCURRENT, COUNSEL.

22 SO THANK YOU, THANK YOU FOR THAT.

23 I'LL DO A PAYMENT SCHEDULE.

24 MR. TORRES: SOMETHING ADDITIONAL, YOUR HONOR.

25 THE COURT: CERTAINLY. GO AHEAD.

1 MR. TORRES: COUNT ONE HAS A STAT MAX OF 60 MONTHS.  
2 THE COURT: OF 60 MONTHS. OKAY. LET' CLARIFY THIS,  
3 THEN. GO AHEAD. SO WE'LL DO -- MR. PLETCHER.

4 MR. PLETCHER: WELL, THE COURT, I THINK, HAS SOME  
5 CHOICES, BUT I THINK YOU CAN ORDER 60 MONTHS ON COUNT ONE AND  
6 THEN ANOTHER 18 MONTHS --

7 THE COURT: ON THE OTHER.

8 MR. PLETCHER: -- ON TOP OF THAT.

9 THE COURT: TO RUN CONCURRENT.

10 MR. PLETCHER: 78 MONTHS.

11 THE COURT: TO RUN CONSECUTIVELY, I MEAN.

12 MR. PLETCHER: OR 78 MONTHS ON COUNT TWO TO RUN  
13 CONCURRENT, WHICH IS PROBABLY BETTER, ALTHOUGH I DEFER A BIT  
14 TO PROBATION ON THE MACHINATIONS.

15 THE COURT: OKAY.

16 MR. TORRES: THAT WOULD BE THE CLEANEST WAY, YOUR  
17 HONOR.

18 THE COURT: 78 ON COUNT TWO TO RUN CONCURRENT WITH  
19 THE STAT MAX ON COUNT ONE?

20 MR. PLETCHER: YES, YOUR HONOR.

21 MR. TORRES: YES, YOUR HONOR.

22 THE COURT: OKAY. VERY WELL. THAT'S WHAT WE WILL  
23 DO.

24 I'D LIKE TO SET A PAYMENT SCHEDULE FOR THE FINE.

25 MR. PLETCHER: YOUR HONOR, I'M SORRY TO INTERRUPT.

1 THE CRIMINAL FINE OF A HUNDRED THOUSAND DOLLARS IS APPLIED TO  
2 BOTH TO BE CONCURRENT. IS THAT ALSO (PAUSE) --

3 MR. TORRES: WE HAVE NO OBJECTION.

4 MR. PLETCHER: -- THE APPROPRIATE WAY TO DO THAT?

5 THE COURT: CORRECT. AND THE SUPERVISED RELEASE IS  
6 CONCURRENT.

7 MR. PLETCHER: YES.

8 THE COURT: THE TERMS AND CONDITIONS ARE CONCURRENT.

9 THANK YOU.

10 I UNDERSTOOD FROM THE PAPERWORK THAT WHEN THE BOND  
11 WAS RELEASED, THAT WAS GOING TO GO TO PAY SOMETHING. I  
12 THOUGHT IT WAS THE RESTITUTION.

13 MR. ADAMS: THAT IS CORRECT, YOUR HONOR. I THINK  
14 IT'S SENTENCING EXHIBIT K --

15 THE COURT: CORRECT.

16 MR. ADAMS: -- IS AN AGREEMENT THAT AUTHORIZES, AND  
17 WE'VE SPOKEN TO THE PEOPLE IN FINANCIAL ABOUT THIS. WE  
18 BELIEVE THE MONEY IS ACTUALLY STILL HELD IN COLORADO, BUT THE  
19 COURT, THIS COURT, CAN ISSUE A MINUTE ORDER DIRECTING THAT THE  
20 MONEY BE TRANSFERRED HERE FOR PAYMENT PURSUANT TO THAT  
21 AGREEMENT IN SENTENCING TO BE PAID TO THE CLERK OF THE COURT  
22 IN THE AMOUNT OF 95,000. THE BALANCE IS TO BE RETURNED AS  
23 PART OF THAT AGREEMENT --

24 THE COURT: OKAY.

25 MR. ADAMS: -- TO HIS WIFE.

1 THE COURT: AND WHAT WOULD YOUR REQUEST BE ON A  
2 PAYMENT SCHEDULE FOR THE BALANCE OF THE FUNDS? AND THEN I'LL  
3 ASK YOU ABOUT A HOUSING DESIGNATION, AND THERE'S NO OBJECTION  
4 TO A SELF-SURRENDER OF AUGUST 1ST.

5 MR. ADAMS: RIGHT. NO OBJECTION TO THAT.

6 THE COURT: THERE'S NO OBJECTION.

7 MR. ADAMS: WE'RE ASKING FOR A DESIGNATION TO LOMPOC  
8 HERE IN CALIFORNIA.

9 THE COURT: OKAY. CERTAINLY. I WILL CERTAINLY DO  
10 THAT ON YOUR BEHALF, MR. MISIEWICZ. I DON'T CONTROL BUREAU OF  
11 PRISONS' HOUSING. IF THEY DEEM IT APPROPRIATE, THEY WILL  
12 CERTAINLY FOLLOW THAT RECOMMENDATION.

13 MR. ADAMS: YOUR HONOR, OUR VIEW, OF COURSE, AND WE  
14 PUT IT IN THE PAPERS, IS THAT WE AGREE WITH THE PROBATION  
15 OFFICE THAT MR. MISIEWICZ DOES NOT HAVE THE ABILITY TO PAY A  
16 FINE. I UNDERSTAND YOUR HONOR DOES NOT AGREE WITH THAT AND  
17 THAT YOU HAVE THE FINAL WORD, BUT WE WOULD ASK THAT THERE BE  
18 NO INTEREST IMPOSED.

19 THE COURT: WELL, I WAS GOING TO NEXT ASK THAT.  
20 IS INTEREST WAIVED IN THIS MATTER?

21 MR. PLETCHER: NOT YET. I THINK PART OF IT DEPENDS  
22 ON THE PAYMENT PLAN. THE IDEA OF PAYING THE MONEY BACK --  
23 WELL, LET ME START OVER. THE DEFENDANT APPEARS TO HAVE  
24 SUBSTANTIAL ASSETS. THERE HAS BEEN, HMM, EUPHEMISTICALLY,  
25 CONFUSION ABOUT THE EXTENT OF THOSE ASSETS SINCE THE VERY

1 OUTSET OF THIS CASE. THUS, MISS GERBOTH AND MR. ADAMS ARE  
2 APPOINTED COUNSEL.

3 THE COURT: WELL, WITHOUT GOING INTO IT, THERE ARE  
4 POSSIBLE ISSUES THERE. I DON'T KNOW. THAT'S NOT FOR ME TO  
5 DECIDE. SO THIS COULD ALL BE MODIFIED, DEPENDING ON FUTURE  
6 EVIDENCE.

7 GO AHEAD.

8 MR. PLETCHER: SO WHAT MY INCLINATION TO RECOMMEND TO  
9 THE COURT IS THAT WE WOULD WAIVE OR REMIT THE INTEREST AND  
10 THAT THE PAYMENT PLAN BE SOMETHING THAT GETS THE CRIMINAL FINE  
11 PAID OFF WITH SUBSTANTIAL ALACRITY.

12 THE COURT: WELL, HE'S (PAUSE) --

13 MR. ADAMS: YOUR HONOR, WE'RE NOT GOING TO KNOW  
14 ANYTHING --

15 THE COURT: NO.

16 MR. ADAMS: -- ABOUT HIS FINANCIAL SITUATION UNTIL --

17 THE COURT: THAT'S RIGHT.

18 MR. ADAMS: -- SOME MONTHS HAVE PASSED AND THE  
19 MILITARY HAS MADE ITS DECISIONS.

20 THE COURT: AND THERE ARE SOME OTHER MATTERS THAT  
21 NEED TO BE SETTLED.

22 MR. ADAMS: THERE'S ANOTHER LEGAL MATTER THAT IS  
23 PENDING THAT HAS TO BE RESOLVED, AND WE JUST SIMPLY DON'T  
24 KNOW. HIS REAL-ESTATE ASSETS, WHILE THEY APPEAR TO BE  
25 SIGNIFICANT, ARE RELATIVELY MODEST, AND THEY WILL HOPEFULLY AT

1 ONE POINT LEAD TO A FAMILY HOME FOR SOME PART OF HIS FAMILY.

2 THE COURT: WHAT I'M INCLINED TO DO IS TO SET MAYBE  
3 250 A MONTH, 500 A MONTH. TELL ME. MAKE A SUGGESTION.

4 MR. ADAMS: I WOULD SUGGEST NO MORE THAN \$250 A MONTH  
5 AT THIS STAGE --

6 THE COURT: OKAY.

7 MR. ADAMS: -- COMMENCING UPON HIS RELEASE FROM  
8 CUSTODY.

9 THE COURT: AND WHILE HE'S IN CUSTODY, I THINK I NEED  
10 TO SET AN AMOUNT, TOO, DON'T I?

11 MR. TORRES: THAT'S CORRECT, YOUR HONOR, AND THAT  
12 COULD BE SIMILAR TO THE INFORMATION FOUND IN THE PSR WITH  
13 REGARD TO THE RESTITUTION.

14 THE COURT: OKAY.

15 MR. PLETCHER: YOUR HONOR, I'M NOT SURE IN THIS CASE  
16 IT'S APPROPRIATE TO WAIVE REPAYMENT DURING CUSTODY DEPENDING  
17 ON WHAT HAPPENS WITH HIS MILITARY RETIREMENT. IT COULD VERY  
18 WELL BE THE CASE THAT HE'S THE RECIPIENT OF SUBSTANTIAL  
19 MILITARY RETIREMENT PAYMENTS DURING THE COURSE OF HIS CUSTODY,  
20 IN WHICH CASE 250 OR \$500 A MONTH WOULD GO A LONG WAY WHILE HE  
21 HAS NO OTHER PERSONAL EXPENSES.

22 THE COURT: I THINK THE PROBLEM IS, MR. PLETCHER,  
23 WE'RE SPECULATING SOMEWHAT AT THIS JUNCTURE.

24 MR. PLETCHER: WE ARE.

25 THE COURT: I DON'T KNOW THAT. YOU MIGHT HAVE BETTER

1 INFORMATION.

2 MR. ADAMS: YOUR HONOR, I KNOW WITH RESPECT TO SOCIAL  
3 SECURITY PAYMENTS, FOR EXAMPLE, A PERSON IN CUSTODY DOES NOT  
4 GET THOSE BENEFITS. I THINK HERE IN THIS SITUATION MY  
5 RESEARCH HAS REVEALED THAT, LIKELY, ANY PAYMENTS MADE WHILE  
6 HE'S ACTUALLY IN CUSTODY WOULD ONLY BE PAID TO THE FAMILY.  
7 THE FAMILY WOULD GET THE FAMILY BENEFIT AND HIS CHILDREN WOULD  
8 BE PROVIDED FOR, BUT I DON'T THINK HE'S GOING TO HAVE, YOU  
9 KNOW, SOME SUBSTANTIAL SUM OF MONEY BEING PUT ON HIS BOOKS AT  
10 THE BUREAU OF PRISONS.

11 THE COURT: SO LET'S BE CLEAR. AT THIS TIME, THERE'S  
12 NO WAIVER OF INTEREST BY THE GOVERNMENT, SO INTEREST WILL BE  
13 ACCRUING ON THIS. THE RESTITUTION IS GOING TO BE PAID AROUND  
14 THE BEGINNING OF AUGUST WHEN THE SELF-SURRENDER AND THAT IS  
15 RELEASED. THE HUNDRED THOUSAND AND THE 200 SPECIAL  
16 ASSESSMENT, I'LL SET A PAYMENT SCHEDULE OF 50 A MONTH WHILE  
17 HE'S IN CUSTODY AND 250 WHEN HE'S OUT, OR (PAUSE) --

18 MR. PLETCHER: FOR THE HUNDRED. FOR THE 200, I THINK  
19 IT HAS TO BE PAID FORTHWITH.

20 THE COURT: HE CAN PAY THE 200 FORTHWITH?

21 MR. ADAMS: YES.

22 THE COURT: OKAY. SO, FOR THE HUNDRED THOUSAND, 50 A  
23 MONTH IN CUSTODY AND THEN 250 WHEN HE'S OUT.

24 MR. ADAMS: WOULD INTEREST BE WAIVED DURING THE TIME  
25 THAT HE IS IN CUSTODY?



1 THE COURT: OKAY. DO YOU WAIVE INTEREST WHILE HE'S  
2 IN CUSTODY?

3 MR. PLETCHER: THE (PAUSE) -- A LOT OF IT DEPENDS ON  
4 THE, THIS ANCILLARY ISSUE OF WHETHER HE'S GOING TO HAVE  
5 THOUSANDS OF DOLLARS COMING IN.

6 THE COURT: OKAY. WELL, LET'S DO THIS. LET'S LEAVE  
7 IT AS IT IS. THE INTEREST IS NOT WAIVED. BUT I WOULD ASK,  
8 MR. PLETCHER, THAT YOU AND MR. ADAMS AND MISS GERBOTH SPEAK ON  
9 THIS ISSUE. IF THERE NEEDS TO BE A MODIFICATION, BRING IT TO  
10 THE COURT. I THINK WE JUST DON'T KNOW ENOUGH, AND ONCE YOU  
11 CAN TELL MR. PLETCHER MAYBE A LITTLE BIT MORE CONCRETELY  
12 WHAT'S LIKELY TO OCCUR WITH HIS SEPARATION FROM THE MILITARY,  
13 THEN (PAUSE) --

14 MR. PLETCHER: I THINK THAT MAKES GOOD SENSE, BECAUSE  
15 I DON'T HAVE A FUNDAMENTAL OBJECTION TO WAIVING INTEREST SO  
16 LONG AS IT'S DONE AS PART OF A BROADER UNDERSTANDING OF WHAT'S  
17 GOING TO HAPPEN FOR REPAYMENT.

18 MR. ADAMS: AND WILL YOUR HONOR BE SETTING A BOND  
19 EXONERATION HEARING PERHAPS FOR THE FRIDAY OF THAT WEEK OF  
20 AUGUST 1ST?

21 THE COURT: YES, WE WILL.

22 MR. ADAMS: MAYBE WE CAN TALK ABOUT THAT ISSUE IN  
23 SOME DETAIL THEN AND WE MAY KNOW MORE.

24 THE COURT: THAT WOULD BE FINE. THAT WOULD BE FINE.  
25 SO THE SELF-SURRENDER IS AUGUST 1ST, ALEX?

1 MR. ADAMS: THAT'S A MONDAY, I BELIEVE.

2 THE DEPUTY CLERK: BEFORE NOON. AND THEN A STATUS  
3 HEARING WILL BE SET FOR AUGUST 5TH, AT NINE O'CLOCK A.M.

4 MR. PLETCHER: YOUR HONOR, IF THE COURT WOULD KINDLY  
5 CONFIRM THE APPELLATE WAIVER, AND THEN I THINK I HAVE MOTIONS  
6 ON THE REMAINING COUNTS.

7 THE COURT: OKAY.

8 MR. ADAMS: YOUR HONOR, HE HAS WAIVED HIS APPEAL  
9 RIGHTS.

10 THE COURT: OH, I KNOW IT. LET ME MAKE THE LIMITED  
11 INQUIRY THAT I MAKE, IF I CAN FIND IT IN HERE.

12 IT'S ON PAGE 21, MR. MISIEWICZ. ON PAGE 21 OF YOUR  
13 PLEA AGREEMENT, YOU GAVE UP YOUR RIGHT TO APPEAL OR  
14 COLLATERALLY ATTACK THE JUDGMENT IN THIS CASE AND THE SENTENCE  
15 THAT I JUST IMPOSED. DO YOU UNDERSTAND THAT?

16 MR. MISIEWICZ: I DO, YOUR HONOR.

17 THE COURT: ONE FINAL POINT. I WOULD LIKE AN ORDER  
18 SUBMITTED FOR THE TRANSFER OF THE MONEY FROM COLORADO TO HERE.

19 MR. ADAMS: I WILL DO THAT, YOUR HONOR.

20 THE COURT: OKAY.

21 MR. ADAMS: AND THEN TRANSFERRED FROM COLORADO TO  
22 HERE AND THEN PAID TO THE CLERK OF THE COURT HERE.

23 THE COURT: CORRECT.

24 MR. ADAMS: VERY WELL.

25 THE COURT: CORRECT. ARE THERE ANY --

1 MR. PLETCHER: YOUR HONOR, THE UNITED STATES MOVES AT  
2 THIS TIME TO DISMISS CASE 13-CR-3782 AND TO DISMISS ANY  
3 REMAINING COUNTS IN 15-CR-0033.

4 THE COURT: OKAY. THOSE MOTIONS TO DISMISS THAT CASE  
5 AND THOSE COUNTS ARE GRANTED.

6 MR. PLETCHER: ALEX, DOES THAT TAKE CARE OF  
7 EVERYTHING ON THAT?

8 THE DEPUTY CLERK: YES.

9 THE COURT: ANYTHING ELSE? LET ME ASK. MR. ADAMS,  
10 MISS GERBOTH, MR. PLETCHER, PROBATION, IS THERE ANYTHING THAT  
11 THE COURT DID NOT COVER?

12 MR. ADAMS: NOT THAT I CAN THINK OF.

13 MS. GERBOTH: I DON'T BELIEVE SO, YOUR HONOR, NO.

14 MR. TORRES: NOTHING IN ADDITION.

15 THE COURT: OKAY. THANK YOU VERY MUCH.

16 WE'LL BE IN RECESS.

17 MR. PLETCHER: NOTHING FURTHER FROM US.

18 THE COURT: OKAY, OKAY. THANK YOU.

19 MR. PLETCHER: THANK YOU.

20 THE COURT: WE'LL BE IN RECESS.

21 (PROCEEDINGS ADJOURNED AT 11:45 A.M.)

22 -----

23 (END OF TRANSCRIPT)

24

25

1 I, FRANK J. RANGUS, OFFICIAL COURT REPORTER, DO  
2 HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND  
3 ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

4  
5 S/FRANK J. RANGUS

6 FRANK J. RANGUS, OCR  
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